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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

29 UNITED STATES OF AMERICA, ) Criminal Case No. 07CR2984-BTM  
30 Plaintiff, ) Date: March 28, 2008  
31 v. ) Time: 11:30 a.m.  
32 FELIX MOJICA-PERALTA, ) GOVERNMENT'S RESPONSE AND  
33 Defendant. ) OPPOSITION TO DEFENDANT'S  
34 MOTIONS IN LIMINE  
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**STATEMENT OF FACTS**3  
On October 2, 2007, Border Patrol Agent Quillin was patrolling the area of Rattlesnake Ridge  
4 south of Old Highway 80, approximately 20 miles east of the Tecate Port of Entry and approximately  
5 2 miles north of the international border. This area is commonly used by illegal aliens to further their  
6 entry into the United States. At approximately 8:00 a.m., Agent Quillin responded to a seismic intrusion  
7 device where he observed fresh footprints for a group of people. He followed the prints when he  
8 encountered a group of six people, one of whom was the Defendant, Felix Mojica-Peralta.9 Agent Quillin questioned each person about their citizenship and immigration status. Each  
10 person, including the Defendant, stated that they were Mexican citizens with no documents allowing  
11 them to enter the United States. All individuals were transported to the Campo Border Patrol Station  
12 for further processing.13 All six individuals were processed at the station. Record checks revealed that Defendant had  
14 a criminal history including a conviction for PC §261, Rape, from Fresno, California. Agents were  
15 processing many people and did not review Defendant's records until that afternoon. At approximately  
16 3:20 p.m. that same day, Agent Plasencia along with Agent Lopez advised Defendant that his  
17 administrative rights no longer applied and read Defendant his Miranda rights. Defendant  
18 acknowledged his Miranda rights and agreed to make a statement. He said that he was a Mexican  
19 citizen who knowingly entered the United States illegally by climbing over the boundary fence earlier  
20 that morning. He stated he was enroute to Fresno, California. He admitted he had no documents to  
21 enter the United States. He admitted that his criminal and immigration history was in fact his. The  
22 interview was electronically recorded.

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II

## **POINTS AND AUTHORITIES**

**A. 404(b) Evidence<sup>1</sup>**

The Government does not intend to introduce any Rule 404(b) evidence. The Court should deny the motion as moot.

**B. Sentencing Enhancement under 18 U.S.C. §924**

7 Defendant moves to prohibit a sentencing under 18 U.S.C. §924(e) commonly referred to as the  
8 armed career criminal statute. Curiously, the Defendant in this case has not been charged with that  
9 provision much less any federal violations involving firearms. A brief review of the case file reveals  
10 that Defendant is only charged with a violation of 8 U.S.C. § 1326, being a deported alien found in the  
11 United States.<sup>2</sup> It is not entirely clear why Defendant seeks to escape the provisions of 18 U.S.C.  
12 §924(e). But, since it appears to be wholly inapplicable to this case, the United States will whole-  
13 heartedly join in this motion.

### C. Border Patrol Agents Presence in Court

15 Defendant moves to require the presence of various United States Border Patrol agents at trial  
16 to “see if they violated any of [Defendant’s] Constitutional Rights.” See Defendant’s Motions in Limine  
17 at page 9. This blanket accusatory insinuation lacks any foundation much less any specificity of facts  
18 to support such a statement.<sup>3</sup>

19 Counsel appears to request that the Government's agents should be present in court while each  
20 is testifying. While the Government does not object to this request in theory, it appears that defense  
21 counsel completely misinterprets the purpose and intent of Rule 615. This writer believes it would be

<sup>1</sup> Defendant's motion mistakenly lists this motion to "disallow 609 evidence regarding other crimes" on the notice of motion.

<sup>2</sup> While the Defendant was found in the United States on or about the date alleged in the indictment, he was not found in the United States with a firearm

<sup>3</sup> If counsel is aware of any constitutional rights violations, the Government invites counsel to provide a sworn declaration of such allegations so the Government can properly investigate.

1 more appropriate to have all witnesses remain outside the courtroom while another is testifying to avoid  
2 any inappropriate accusations that the witnesses were biased.

3 **III**

4 **CONCLUSION**

5 For the foregoing reasons, the Government respectfully requests that Defendant's motions in  
6 limine be denied except where unopposed.

7 DATED: March 20, 2008

8 Respectfully submitted,

9 KAREN P. HEWITT  
10 United States Attorney

11 /s/ Alessandra P. Serano

12 ALESSANDRA P. SERANO  
13 Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Case No. 07CR2984-BTM

Plaintiff,

V. )

FELIX MOJICA-PERALTA,

Defendant. )

Case No. 07CR2984-BTM

## CERTIFICATE OF SERVICE

10 || IT IS HEREBY CERTIFIED THAT:

I, ALESSANDRA P. SERANO, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

12 I am not a party to the above-entitled action. I have caused service of Government's Response  
13 and Opposition to Defendant's Motions in Limine, on the following parties by electronically filing the  
foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Christian de Olivas, Esq.

Email: christian@deolivaslaw.com

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 20, 2008

s/Alessandra P. Serano  
**ALESSANDRA P. SERANO**